I–A on February 8, 1966 (SSF 10). On February 23, 1966, petitioner appealed his I–A classification, requesting that he be given a student (II–S) deferment as a part-time "student at Pierce College carrying 17½ units" (SSF 12). This request was considered by the State Appeal Board, and, on May 2, 1966, it voted unanimously to retain him in Class I–A (SSF 15).

On September 6, 1967, petitioner again requested a student (II–S) deferment, stating that he now was a full-time student at Los Angeles Valley College (SSF 25). The local board considered this request and informed him, on November 13, 1967, that "the facts presented do not warrant the reopening or reclassification of your case at this time" (SSF 30). Thereafter, petitioner was ordered to report for induction on January 16, 1968; however, at his request, his induction was postponed to permit him to complete the current academic year at Los Angeles Valley College (SSF 31–34), and, on February 6, 1968, he was placed in Class I–SC (SSF 3). He retained that classification until March 4, 1969, when he was again classified I–A (SSF 10) and informed of his right to a personal appearance or an administrative appeal (SSF 36).

Petitioner did not contest his I–A classification, however, and on August 20, 1969, he was mailed an order to report for induction on September 3, 1969 (SSF 37). At his request, his induction station was transferred to San Rafael, California (SSF 38), and the reporting date was rescheduled for December 3, 1969

(SSF 40). On that date, petitioner failed to report (SSF 10). Thereafter, on October 15, 1970, he was advised of his continuing duty to report for induction and directed to report on October 27, 1970 (SSF 49).

The day before the scheduled reporting date, on October 26, 1970, the board received a letter from petitioner requesting, for the first time, the Special Form for Conscientious Objectors (SSS Form 150). The letter stated (SSF 74): "I * * * finally made up my mind, that is, my conscience has now made it up for me." Petitioner also arrived at the board on October 26; he was handed SSS Form 150 which he promptly filled out and returned (SSF 11, 54). He was advised then by the secretary of the board that he should report for induction the next day as ordered, since the local board "could not do anything about the 150 Form" (SSF 51). Petitioner reported for, but refused to submit to, induction on October 27, 1970 (SSF 103–104). The indictment and conviction followed, and the court of appeals affirmed.

1. The court below held that the local board's failure to consider petitioner's belated conscientious objector claim was proper under this Court's ruling in *Ehlert* v. *United States*, 402 U.S. 99. In *Ehlert*, this Court held that consideration of post-induction-notice conscientious objector claims is not to be undertaken by local boards of the Selective Service System; rather the appropriate forum for review of such claims is within the military after the registrant has submitted to induction.

Petitioner asks this Court to reconsider its decision in *Ehlert* on the ground that the Army might not continue to adhere to the assurance given to this Court by its General Counsel in that case. The argument here is identical to the argument that has been advanced by petitioner's counsel in two other cases involving late-crystallizing conscientious objectors that are presently pending in this Court on petitions for writs of certiorari. See *Farrell and Roy* v. *United States*, No. 71–77, this Term, and *Taggart* v. *United States*, No. 70–341, this Term. For the reasons stated in the government's response filed in *Farrell and Roy* and in *Taggart*, there is no cause for further review in the present case.

2. We point out, moreover, that the Department of Defense, in direct response to this Court's observation in *Ehlert* that "the pertinent military regulations are somewhat inconsistent in their phrasing" (402 U.S. at 106), has recently amended Department of Defense Directive No. 1300.6 to clarify the earlier imprecise language that apparently was cause for "the sharp division among the courts of appeals" (402 U.S. at 106). The new amendment (DOD Directive 1300.6, August 20, 1971)—which is set forth more fully in petitioner's Supplemental Memorandum (p. 3)—provides:

* * * * *

> 2. Nothing contained in this Directive renders ineligible for classification as a Conscientious Objector a member of the Armed Forces who possessed Conscientious Objector beliefs before entering military service if (a) such

beliefs crystallized after receipt of an induction notice; (b) he could not request classification as a Conscientious Objector by the Selective Service System because of Selective Service System regulations prohibiting the submission of such requests after receipt of induction notice; and (c) he makes application for classification as a Conscientious Objector within seventy-two (72) hours after his induction.

There is thus little reason to assume that the military intends now to break with its past practice—as reflected in the assurance given in *Ehlert* (402 U.S. at 107–108)—of considering post-notice conscientious objector claims that are foreclosed by regulation (32 C.F.R. 1625.2) from review by Selective Service.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

OCTOBER 1971.

U.S. GOVERNMENT PRINTING OFFICE: 1971